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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

GEORGE W. VON SALM,

Plaintiff and Appellant,

v.

UNIVERSITY PROPERTIES, INC. et
al.,

Defendants and Respondents.

B219087

(Los Angeles County
Super. Ct. No. BC413074)

APPEAL from an judgment of the Superior Court of Los Angeles County,
John P. Schook, Judge. Affirmed.

Keith A. Fink and Associates, Keith A. Fink, Sarah E. Hernandez and
Andrew C. Pongracz, for Plaintiff and Appellant.

No appearance for Defendants and Respondents.

Appellant George W. Von Salm appeals the trial court's order quashing service of process on respondents University Properties, Inc. (UPI) and Richard M. Knapp for lack of personal jurisdiction.¹ We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The Complaint

Von Salm brought suit against respondents UPI and its president and owner Knapp for breach of contract, breach of implied covenant of good faith and fair dealing and violation of various California statutory provisions.² The complaint alleged that UPI, acting through Knapp, offered Von Salm a position as manager of a Oklahoma hotel and, after Von Salm terminated his employment in California and turned down another job offer here, told him the position was not available after all. Von Salm contended respondents misrepresented that the employment would last ten months and that he would not be terminated except for cause. Von Salm further contended he had commenced performing work for UPI and was

¹ No respondent's brief was filed. The rule we follow in such circumstances "is to examine the record on the basis of appellant's brief and to reverse only if prejudicial error is found. [Citations.]" (*Votaw Precision Tool Co. v. Air Canada* (1976) 60 Cal.App.3d 52, 55; accord, *Carboni v. Arrospide* (1991) 2 Cal.App.4th 76, 80, fn. 2.)

² Specifically, the complaint alleged that respondents violated the fraud provisions of the Civil Code and Labor Code section 970 which prohibits "influenc[ing], persuad[ing], or engag[ing] any person to change from one place to another in this State or from any place outside to any place within the State, or from any place within the State to any place outside, for the purpose of working in any branch of labor, through[,] or by means of knowingly false representations, whether spoken, written, or advertised in printed form, concerning either: [¶] (a) The kind, character, or existence of such work; [¶] (b) The length of time such work will last, or the compensation therefor; [¶] (c) The sanitary or housing conditions relating to or surrounding the work; [¶] (d) The existence or nonexistence of any strike, lockout, or other labor dispute affecting it and pending between the proposed employer and the persons then or last engaged in the performance of the labor for which the employee is sought."

owed wages for his work. The complaint alleged on information and belief that UPI was a Utah corporation, that Knapp was a resident of Utah, and that both were “doing substantial business in the County of Los Angeles, California.”

Motion to Quash

After being served, respondents moved to quash for lack of personal jurisdiction. Respondents contended that UPI was a Utah corporation, with offices in Utah, that it was not registered to do business within California, and that it did not maintain any telephone numbers or bank accounts within the state, manage or own any real property within the state, or have any employees stationed or living in the state. Respondents further contended that Knapp had never lived in California, did not own any real or personal property within the state and had no other connection with the state.³

In opposing the motion to quash, Von Salm submitted a declaration setting forth the following facts: In 2008, Von Salm, a California resident, saw a posting on “H Careers,” an online job board, seeking a manager for a hotel in Oklahoma operated by UPI. Knapp was listed as the contact. Von Salm applied for the position from California.⁴ He followed up by calling UPI to ensure his resume had been received. Sometime after Von Salm applied, Knapp contacted him by telephone, talked to him about the position, and sent for his review financial documents pertaining to the Oklahoma hotel and another hotel operated by UPI. Knapp offered to pay Von Salm’s travel expenses to fly to Utah for an in person

³ In responding to the motion, Von Salm did not dispute these contentions.

⁴ Von Salm stated in his declaration that he applied online. Knapp stated in a subsequently-filed declaration that Von Salm applied via facsimile. Knapp did not dispute that the site was interactive or that an applicant could have chosen to apply online.

interview. On October 9, 2008, Von Salm flew from California to Utah and met with Knapp. During the interview, Knapp offered and Von Salm accepted the position of director of operations of the Oklahoma hotel. On October 12, after Von Salm's return to California, he memorialized the terms of the agreement in an email to Knapp. Von Salm terminated his employment in California, leased his residence, moved his belongings to a storage facility and turned down another job offer. In addition, Von Salm contacted various individuals in the hospitality and restaurant industry and several cooking schools to discuss operations at the Oklahoma hotel and a hotel in Utah. On October 27, Knapp called Von Salm -- who was still in California -- and informed him his services were not required. On November 7, Knapp emailed Von Salm to confirm that the position would not be his.

In a "[s]upplemental [d]eclaration" filed in conjunction with respondents' reply, Knapp denied telling Von Salm that he had been hired during the October 9 interview and stated that he informed Von Salm he had not yet been hired in an October 13 telephone conversation in which Von Salm announced his intention to move to Utah.⁵ Knapp further stated that he did not receive the follow-up email Von Salm contended he sent on October 12. With respect to the work Von Salm claimed to have performed on behalf of UPI, Knapp stated that prior to the October 9 interview, Von Salm reported he had met with a well-known chef and the former CEO of a hotel chain to discuss obtaining their services for UPI. Knapp believed Von Salm had made those connections to improve his prospects of obtaining the

⁵ Avis Richards, UPI's accounting manager and vice president, stated in a separate declaration that he informed Von Salm on October 13 that he had not been hired and that the application process was not yet complete. Von Salm objected to the entirety of Knapp's and Richards' declarations on the grounds of irrelevance, lack of personal knowledge and lack of foundation and further objected that the statements were hearsay, speculative and conclusory. The trial court did not rule on the objections.

position offered. Knapp denied asking Von Salm to perform any services for UPI other than to review some UPI data and provide proposed solutions to certain problems “as part of [an] effort to assess his skills.”

The court granted the motion to quash. At the hearing, the court stated: “[T]he complaint here alleges that [respondents] placed an ad on the internet website [H Careers] for the position of general manger of a hotel in Oklahoma. [¶] . . . [Von Salm] sent his resume to [respondents’] offices in Utah and also visited those offices [¶] The complaint further alleges that [Von Salm] entered into an employment agreement while in the state of Utah . . . after he . . . talked with Mr. Knapp [¶] Although the complaint described the activities of [Von Salm] in the State of California, the complaint does not allege that any of the activities by [respondents] occurred or took place within the great State of California. [¶] . . . Knapp has never lived in California. He does not own any real estate or personal property within the State of California. He has no contact with the State of California. He has not paid any taxes to the State of California. [¶] [UPI] is a Utah corporation with offices in Utah. It is not registered to do business in the State of California as a foreign corporation. It does not maintain phone numbers in the State of California. It does not maintain any bank accounts in the State of California. It does not manage or own any real property within the State of California. It does not have any employee stationed or living in the State of California. [¶] The only connection to the State of California is that [Von Salm], who is a California resident, contacted and solicited employment from the company in either the State of Utah or Oklahoma. . . . [¶] . . . [¶] [T]he motion to quash service of summons . . . is granted based on [the] facts and on the file and based on the [status of the] parties. [¶]. . . [T]here is not [a] sufficient nexus for this court to have jurisdiction over this matter.”

DISCUSSION

California's long-arm statute, Code of Civil Procedure section 410.10, "authorizes California courts to exercise jurisdiction on any basis not inconsistent with the Constitution of the United States or the Constitution of California." (*Vons Companies, Inc. v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444.) In general, assertion of personal jurisdiction over a nonresident defendant "comports with the requirements of the due process clause of the federal Constitution if the defendant has such minimum contacts with the state that the assertion of jurisdiction does not violate ""traditional notions of fair play and substantial justice."" (*Ibid.*, quoting *International Shoe Co. v. Washington* (1945) 326 U.S. 310, 316; see *Hall v. LaRonde* (1997) 56 Cal.App.4th 1342, 1345 ["Each person has a liberty interest in not being subject to judgments of a forum with which he or she has no minimum contacts."].)

When a motion to quash based on lack of personal jurisdiction is brought, "the burden of proof is placed upon the plaintiff to establish the facts of jurisdiction by a preponderance of the evidence. [Citation.] This may be done through presentation of declarations, with opposing declarations received in response." (*Aquila, Inc. v. Superior Court* (2007) 148 Cal.App.4th 556, 568.) "Declarations cannot be mere vague assertions of ultimate facts, but must offer specific evidentiary facts permitting a court to form an independent conclusion on the issue of jurisdiction. [Citations.]" (*In re Automobile Antitrust Cases I & II* (2005) 135 Cal.App.4th 100, 110.) ""[W]here there is a conflict in the declarations, resolution of the conflict by the trial court will not be disturbed on appeal if the determination of that court is supported by substantial evidence. [Citations.]" [Citation.]" (*Aquila, Inc. v. Superior Court, supra*, at p. 568, quoting *Magnecomp Corp. v. Athene Co.* (1989) 209 Cal.App.3d 526, 533.) "The merits of the complaint are not at issue at this stage of proceedings. [Citation.]

However, when personal jurisdiction is asserted on the basis of a nonresident defendant's alleged activities in this state, facts relevant to jurisdiction may also bear on the merits of the complaint. [Citation.]" (*In re Automobile Antitrust Cases I & II, supra*, at p. 110.)

"On review, the question of jurisdiction is, in essence, one of law. When the facts giving rise to jurisdiction are conflicting, the trial court's factual determinations are reviewed for substantial evidence. [Citation.] Even then, we review independently the trial court's conclusions as to the legal significance of the facts. [Citations.] When the jurisdictional facts are not in dispute, the question of whether the defendant is subject to personal jurisdiction is purely a legal question that we review de novo. [Citation.]" (*Aquila, Inc. v. Superior Court, supra*, 148 Cal.App.4th at p. 568, quoting *Dorel Industries, Inc. v. Superior Court* (2005) 134 Cal.App.4th 1267, 1273.) "The ultimate issue of whether an exercise of jurisdiction is fair and reasonable is a legal determination subject to de novo review on appeal. [Citation.]" (*Aquila, Inc. v. Superior Court, supra*, at p. 568.)

Here, a California resident brought suit against Utah residents for breach of an employment contract to manage a hotel in Oklahoma. Generally speaking, an offer of out of state employment by an out of state employer to a California resident does not support assertion of jurisdiction over the employer by the California resident in a later action for breach of employment contract. This was established in *Stanley Consultants, Inc. v. Superior Court* (1978) 77 Cal.App.3d 444, 446-447, where defendant, an Iowa corporation, seeking a port manager for a harbor in Antigua, received information that the plaintiff had the necessary qualifications for the position and contacted him in California, where the plaintiff then resided. Negotiations followed and were conducted by exchange of letters, telephone calls and an in person interview in Iowa. While in Iowa, the plaintiff entered into a contract of employment with the defendant. Several years later, the

plaintiff brought suit against the defendant for breach of the employment contract. The trial court granted the defendant's motion to quash and the Court of Appeal affirmed, finding that "[t]o hold that a foreign corporation has subjected itself to the judicial jurisdiction of California by the simple act of employing a California resident to perform services not within the State of California would be totally inconsistent with the Constitutions of this state and of the United States, and would be an unreasonable and an unrealistic extension of jurisdiction over a nonresident foreign corporation." (*Id.* at p. 451.)

Stanley was followed in *Stone v. State of Texas* (1999) 76 Cal.App.4th 1043, where the plaintiff, a San Diego pediatrician, was solicited by an out of state firm for a position in Texas, which he accepted after negotiating a salary and benefits package from California. When a dispute arose over the benefits provided, the plaintiff resigned and brought suit in California for breach of contract and violation of Labor Code section 970. Noting that "all future consequences of [the] employment contract were in Texas," the court found that "California lacks interest in a contract dispute between Texas residents where there was no untoward effect here" and that "California has no public policy reason to hold the [defendant] answerable to [the plaintiff's] claim under Labor Code section 970." (*Stone v. State of Texas, supra*, at pp. 1049, 1050.)

Von Salm contends that assertion of jurisdiction over respondents was nonetheless appropriate because UPI advertised an employment opportunity on an Internet site widely available to California residents and Von Salm performed work in California on UPI's behalf. Von Salm contends these facts support both general and specific jurisdiction.

To support general jurisdiction, a defendant's contacts with the state must be "substantial . . . continuous and systematic." (*Luberski, Inc. v. Oleificio F.LLI Amato S.R.L.* (2009) 171 Cal.App.4th 409, 414, quoting *Vons Companies, Inc. v.*

Seabest Foods, Inc., *supra*, 14 Cal.4th at pp. 445-446.) “Continuous and systematic contacts include such activities as maintaining an office and employees in the forum, use of forum bank accounts, and the marketing or selling of products in the forum state.” (*Shisler v. Sanfer Sports Cars, Inc.* (2006) 146 Cal.App.4th 1254, 1259.) The activities described by Von Salm in his declaration -- a job posting on a Web site, interaction with a single California resident and performance of minimal activities in the state by a single alleged employee -- are insufficient to support general jurisdiction. (See, e.g., *Luberski, Inc. v. Oleificio F.LLI Amato S.R.L.*, *supra*, at p. 414 [Italian olive oil producer not subject to general jurisdiction where its contacts with California consisted of shipping olive oil to small number of customers within the state]; *Shisler v. Sanfer Sports Cars, Inc.*, *supra*, at pp. 1259-1260 [defendant’s sale of ten vehicles in California out of 40,000 total vehicles sold, and maintenance of Web site accessible to Californians advertising products which stated that defendant shipped “worldwide” insufficient to support general jurisdiction]; *Carretti v. Italpast* (2002) 101 Cal.App.4th 1236, 1243 [no jurisdiction where defendant supplied products “consistently and for years” to plaintiff who did business in California and sent representatives to deal with California purchasers twice].)

“If the nonresident defendant does not have substantial and systematic contacts in the forum sufficient to establish general jurisdiction, he or she still may be subject to the specific jurisdiction of the forum, if the defendant has purposefully availed himself or herself of forum benefits [citation], and the ‘controversy is related to or “arises out of” a defendant’s contacts with the forum.’” (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, 14 Cal.4th at p. 446, italics omitted, quoting *Helicopteros [Nacionales de Columbia v. Hall* (1984)] 466 U.S. 408, 414.) Purposeful availment occurs where a nonresident “has ‘purposefully directed’ his or her activities at forum residents [citation]”;

“‘purposefully derived benefit’ from forum activities [citation]”; or
“‘‘purposefully avail[ed himself or herself] of the privilege of conducting activities within the forum State, thus invoking the benefits and protections of its laws.’” [Citation].” (*Vons Companies, Inc. v. Seabest Foods, Inc.*, *supra*, at p. 446, quoting *Burger King Corp. v. Rudzewicz* (1985) 471 U.S. 462, 472, 473, 475.)

To determine whether maintaining or posting information on a Web site accessible to Californians is sufficient to establish purposeful availment for purposes of subjecting a defendant to specific jurisdiction, California courts “look to the sliding scale analysis described in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.* (W.D.Pa. 1997) 952 F.Supp. 1119.” (*Snowney v. Harrah’s Entertainment, Inc.* (2005) 35 Cal.4th 1054, 1063.) “‘At one end of the spectrum are situations where a defendant clearly does business over the Internet. If the defendant enters into contracts with residents of a foreign jurisdiction that involve the knowing and repeated transmission of computer files over the Internet, personal jurisdiction is proper. [Citation.] At the opposite end are situations where a defendant has simply posted information on an Internet Web site which is accessible to users in foreign jurisdictions. A passive Web site that does little more than make information available to those who are interested in it is not grounds for the exercise [of] personal jurisdiction. [Citation.] The middle ground is occupied by interactive Web sites where a user can exchange information with the host computer. In these cases, the exercise of jurisdiction is determined by examining the level of interactivity and commercial nature of the exchange of information that occurs on the Web site.’” (*Ibid.*, quoting *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, *supra*, at p. 1124.)

Von Salm presented evidence that UPI posted a position available on a job site accessible to Californians. The site was not purely passive because it apparently permitted applicants to submit an application and resume through the

Internet. However, there was no business transacted over the site and negotiations were conducted by other means. The instant situation is analogous to that in *Shisler v. Sanfer Sports Cars, Inc.*, *supra*, 146 Cal.App.4th 1254, where the defendant's Web site advertised its vehicles and provided a method of completing a credit application. The plaintiff, a California resident, saw on the defendant's Web site a particular vehicle offered for sale. All further information about the vehicle was conveyed, and all negotiations were conducted, through the mail or over the telephone. The court found that absent any evidence that the defendant "expressly reached out to California in search of this or any other business opportunity," this "one-time transaction" did not establish "the 'purposeful availment' prong of the test for specific jurisdiction." (*Id.* at pp. 1261-1262.) Similarly here, Von Salm responded to a job advertisement available via the Internet for access by, but not particularly directed to, California residents. Once the company received his application -- submitted either interactively or via facsimile -- further discussions took place telephonically, through email or in person in Utah. The job was allegedly offered to Von Salm in Utah. This was insufficient to establish that respondents purposefully directed activities at this state or otherwise availed themselves of forum benefits. Von Salm's contention that under the impression he had been offered the position, he commenced performance of activities which benefitted UPI while in California does not persuade us otherwise. The activities he described -- talking to some contacts about updating or improving the services offered at out of state hotels operated by UPI and reviewing some information provided by UPI -- were not a substantial part of the functions of the job, which was to take place almost entirely outside

California. Von Salm did not provide a factual basis for assertion of jurisdiction over respondents by the courts of this state.⁶

DISPOSITION

The judgment is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

SUZUKAWA, J.

⁶ Von Salm contends the trial court erred in failing to rule on his evidentiary objections to the declarations submitted by respondents. As we conclude that Von Salm failed to meet his burden of proving the facts to support jurisdiction by a preponderance of the evidence, we need not address whether respondents' declarations contained admissible evidence.